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the interest of a sub-contractor unless the latter has complied with the provisions of the Statute (Code, sec. 2479, as amended Acts 1893-'4, p. 523), rendering the owner personally liable to the sub-contractor to the extent that such owner is indebted to the general contractor. Where, however, such personal liability has been duly created, it becomes a preferred claim, and is to be paid in full in preference to the claims of other sub-contractors who have not obtained a like advantage, but have subsequently perfected their liens under sec. 2477 of the Code.

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RICHMOND ICE CO. v. CRYSTAL ICE CO.—Decided at Richmond, March 14, 1901.—*Buchanan, J.* Absent, *Whittle, J.*:

1. CONTRACTS—*Goods to be manufactured—Surplus—Inability to perform—Negligence.* A defendant who has contracted to furnish certain goods to the plaintiff "out of his surplus product and so as not to interfere with existing contracts" cannot be excused on the ground of inability to perform, where the inability was the result of the defendant's failure to exercise reasonable diligence and care in putting his machinery in a condition to enable him to perform.

2. DAMAGES—*Breach of contract to deliver goods.* Under the evidence in this cause, the measure of the plaintiff's damages for the failure of the defendant to deliver goods according to contract, which the plaintiff has been compelled to purchase of another, is the difference between the contract price and the price which the plaintiff has been compelled to pay.

3. CONTRACTS—*Failure to deliver goods—Refusal to accept—Damages.* Under a contract to pay for a given quantity of ice per year, whether the whole quantity is accepted or not—the same to be delivered from day to day as the purchaser may require—the vendor is not entitled to recover for the difference between the quantity contracted for and that actually accepted, where, during a portion of the time, the vendor was unable to furnish the ice as the parties had agreed.

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HORTON v. COMMONWEALTH.—Decided at Richmond, March 21, 1901.—*Keith, P.*

1. CRIMINAL LAW—*Principal in second degree—Defining offence of principal.* On an indictment of a person as principal in the second degree of murder in the first degree, it is proper for the trial court to define murder of the first degree as it is included in the indictment against the principal of the first degree, and is one of the degrees of homicide with which the defendant is charged as having aided and abetted.

2. CRIMINAL LAW—*Murder—Deadly weapons—Previous possession—Presumption.* A mortal wound given with a deadly weapon, in the previous possession of the slayer, without any or upon very slight provocation, is *prima facie* willful and premeditated killing, and throws upon the accused the necessity of proving extenuating circumstances.

3. CRIMINAL LAW—*Principals in first and second degree.* Principals in the first degree are those who are the actors, or actual perpetrators of the crime—those who are the immediate perpetrators of the act. Principals in the second degree are those who did not with their own hands commit the act, but were present, aiding and abetting it. It is not necessary in order to make a person principal in

the second degree that he be actually present when the crime was committed, or that he actually participated in the commission of the crime. The test as to whether or not he is a principal in the second degree is, was he encouraging, inciting, or in some manner offering aid or consent to the crime. All persons present lending countenance, or otherwise aiding, while another does the act, are principals in the second degree.

4. CRIMINAL LAW—*Murder—Acts and declarations of accused at time of killing.* In determining whether a prisoner charged with murder is a principal in the second degree, the jury may consider all the acts and declarations of the prisoner at the time of the killing, both before and after.

5. CRIMINAL LAW—*Conflicting evidence—How weighed.* The jury is not to regard the evidence in a criminal case as equally balanced merely because a number of witnesses testify directly opposite to each other. The jury should determine the weight and credibility of the evidence from the appearance of the witnesses on the stand, their manner of testifying, their apparent candor and fairness, their apparent intelligence, and from all the other surrounding circumstances appearing on the trial.

6. CRIMINAL LAW—*Reasonable doubt—Ingenuity of counsel.* A prisoner is entitled to the benefit of every reasonable doubt which arises in the minds of the jury upon a candid and impartial investigation of the evidence, but not to doubts raised by the ingenuity of counsel independently of the evidence.

7. CRIMINAL LAW—*Aiders and abettors—Sharing criminal intent.* To constitute an aider or abettor it is essential that the aider and abettor share the criminal intent of the principal, and if a reasonable doubt exists of the intention of a party, in interfering in a fight between two other persons, he cannot be found guilty as an aider and abettor.

8. CRIMINAL LAW—*Aiders and abettors—Presence—Participation.* An aider and abettor is one who is present, actually or constructively, and participates in the crime of the principal; but any encouragement or act of assistance is a participation in the crime.

9. CRIMINAL LAW—*Verdict—Sufficiency.* On an indictment charging one as principal in the second degree to a murder, a verdict which finds the prisoner “guilty as charged in the indictment,” and fixes his punishment, is sufficient.

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WHITE v. NEW YORK, PHILADELPHIA & NORFOLK RAILROAD CO.—

Decided at Richmond, March 21, 1901.—*Harrison, J.:*

1. RAILROADS—*Fires—Presumption of negligence—How overcome.* In an action against a railroad company to recover damages resulting from fires alleged to have been caused by its engines, the burden is on the plaintiff to show that the fire arose, as alleged, from sparks emitted by its engines. When this is done, the negligence of the company is presumed, and it must show that it has observed every reasonable precaution, and availed itself of the best mechanical contrivances and inventions in known practical use to prevent the burning of property by the escape of fire, and if it succeeds in doing this it has performed its duty and cannot be held liable.